STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

ARAMIS J. O'REAR,

Defendant-Appellant.

UNPUBLISHED
February 21, 2003

No. 236856
Wayne Circuit Court
LC No. 01-001641-01

Before: Gage, P.J., and Wilder and Fort Hood, JJ.

PER CURIAM.

After a bench trial, defendant was convicted of assault with intent to do great bodily harm less than murder, MCL 750.83, and felonious assault, MCL 750.82. Defendant was sentenced to 12 months to 4 years on the felonious assault count, and to 29 months to 10 years on the assault with intent to do great bodily harm less than murder count. Defendant now appeals as of right. We affirm.

Defendant's convictions arise from a confrontation she had with complainants Kimberly Thompson and Nakiche Carter in the parking lot of a Detroit nightclub, during which the complainants were injured. Defendant first argues that the trial court made insufficient findings of fact and conclusions of law regarding defendant's claim of self-defense, and that, therefore, defendant's convictions must be reversed or, alternatively, the case must be remanded for more precise findings of fact. We disagree.

In actions tried without a jury the trial court must make findings of fact and state separately its conclusions of law as to contested matters. MCR 2.517(A)(1), MCR 6.403, *People v Feldmann*, 181 Mich App 523, 534; 449 NW2d 692 (1989). Findings are sufficient if it appears that the trial court was aware of the issues in the case and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). Moreover, "[a] court's failure to find the facts does not require remand where it is manifest that the court was aware of the factual issue, that it resolved the issue, and that further explication would not facilitate appellate review." *People v Legg*, 197 Mich App 131, 134-135; 494 NW2d 797 (1992).

Defendant asserts that a statement made by the trial court, that defendant "did not act in self-defense," constitutes the whole of the court's findings on this question and that, standing alone, these findings are insufficient. We disagree. That statement occurred in the midst of the prosecutor's argument that there was no case for self-defense because defendant testified that she

did not hit anybody and was only the recipient of blows, and, thus, taking defendant's testimony at face value, she could not have acted in self-defense. Therefore, it is clear that the trial court was aware of the issue, that it resolved the issue, and that further explication would not facilitate appellate review.

Defendant also argues that the trial court's findings were insufficient to determine how the trial court resolved the problems of contradictory evidence and witness credibility. The record establishes, however, that the trial court evaluated the credibility of the witnesses who had testified. While the trial court did not expressly find certain witnesses more or less credible than others, the trial court observed that while all of defendant's witnesses were friends of defendant, two of the prosecution's witnesses were disinterested parties with no motivation to lie. The clear implication of this observation by the trial court was that the trial court considered the prosecution's witnesses to be more credible. Defendant's claim that the trial court made insufficient findings about witness credibility on the self-defense issue is simply unfounded.

Defendant next argues that irrespective of the trial court's findings of fact on the issue of self defense, the prosecution failed to establish beyond a reasonable doubt that defendant did not act in self-defense. We disagree.

In order for self-defense to be lawful the evidence must show that: (1) the defendant honestly and reasonably believed that she was in imminent danger of death or serious bodily harm, *People v Riddle*, 467 Mich 116, 119; 649 NW2d 30 (2002); (2) the defendant was not the initial aggressor, *id.* at 120 n 8; and (3) the defendant did not use more force than was necessary, *People v Deason*, 148 Mich App 27, 31; 384 NW2d 72 (1985), abrogated on other grounds *People v Heflin*, 434 Mich 482, 503 n 16; 456 NW2d 10 (1990). Once evidence of self-defense is introduced, the prosecutor bears the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense. *People v Kemp*, 202 Mich App 318, 322; 508 NW2d 184 (1993); *People v Fortson*, 202 Mich App 13, 20; 507 NW2d 763 (1993).

The prosecution presented evidence that defendant either initiated the verbal challenge with complainants in the parking lot or that the exchange between defendant and the complainants occurred simultaneously, and that defendant's actions unnecessarily escalated from the use of fighting words to the use of fists and then a deadly weapon. In reviewing the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecution, resolving all conflicts in the evidence in favor of the prosecution, *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999), and reserving to the trier of fact questions of witness credibility, *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). On the basis of the record before us, we find that sufficient evidence was presented to permit a rational trier of fact to find beyond a reasonable doubt that defendant did not act in self-defense during the fight in the nightclub's parking lot.

Defendant next argues that the trial court abused its discretion by permitting Officer Wheatly, the police officer who detained defendant after the fight, to give testimony regarding hearsay information he obtained about the fight from nightclub security officer Vincent Partridge. Defendant also contends that this error was not harmless and that, therefore, her convictions must be reversed. Once again, we disagree.

First, contrary to defendant's claim on appeal, the trial court clearly articulated its reasons for permitting the challenged evidence to be admitted by finding that the challenged evidence was being offered not to prove the truth of the matter asserted, but instead to rehabilitate the credibility of Officer Wheatly. Second, the trial court did not err by admitting this testimony by Officer Wheatly. The decision whether to admit evidence is within the discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998). MRE 802 provides that hearsay is not admissible except as provided by the Michigan Rules of Evidence. Hearsay is defined in MRE 801 to be "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Thus, evidence which is not offered to prove the truth of the matter asserted, but rather for some other purpose, is not hearsay, and thus is not barred by MRE 802.

On cross examination defendant challenged Officer Wheatly's credibility by demonstrating that despite Wheatley's testimony that his partner, Officer Pugh, told him that defendant had a knife, this information was not recorded in his police report. On redirect examination, the prosecution offered evidence that the nightclub security officer and another witness (Eddie Blue) each observed defendant with a knife and that this information was recorded in the police report. We agree with the trial court's conclusion that this evidence was admissible for the limited purpose of witness rehabilitation, and find that the trial court did not abuse its discretion in permitting the challenged testimony.

Even if the evidence was improperly admitted, any such error was harmless because the error was not prejudicial. *People v Mateo*, 453 Mich 203, 215; 551 NW2d 891 (1996). Three witnesses identified defendant as having wielded a knife during the confrontation, and Officer Wheatley's testimony about hearsay statements in this regard was cumulative. Moreover, unlike a jury, a judge acting as the factfinder "possesses an understanding of the law which allows him to ignore [evidentiary] errors and to decide a case based solely on properly admitted evidence." *People v Taylor*, 245 Mich App 293, 305; 628 NW2d 55 (2001).

Defendant's final argument on appeal is that she was deprived of her right to a fair trial when the trial court permitted the prosecution, on the first day of trial, to endorse complainant Nakiche Carter as a witness, when the prosecution had failed to list Ms. Carter on the witness list previously filed with the court and served on defendant prior to trial. We disagree.

This Court reviews for an abuse of discretion a trial court's decision to allow a late endorsement of a witness. *People v Gadomski*, 232 Mich App 24, 32; 592 NW2d 75 (1998).

MCL 767.40a(3) requires the prosecutor to send to a defendant, not less than thirty days before trial, a list of the witnesses the prosecutor intends to produce at trial. MCL 767.40a(4) allows a prosecutor to add or delete individuals from the witness list at any time upon leave of the court and for good cause shown. If this statute is violated, the defendant must show prejudice from the violation before he is entitled to relief. *People v Hana*, 447 Mich 325, 358 n 10; 524 NW2d 682 (1994).

We find that defendant was not unfairly surprised, and therefore was not prejudiced, by the late endorsement of Ms. Carter as a witness. Ms. Carter was a complainant in the case who was presented as a witness at defendant's preliminary hearing and cross-examined by

defendant's counsel. Moreover, defense counsel conceded at the time he objected to the late endorsement of this witness that he had assumed the prosecution intended to call Carter as a witness. Clearly, Ms. Carter's endorsement as a witness did not prejudice defendant because there was no unfair surprise. Accordingly, defendant was not denied a fair trial, and reversal of defendant's convictions is not warranted.

Affirmed.

/s/ Hilda R. Gage
/s/ Kurtis T. Wilder
/s/ Karen Fort Hood